January 9, 2017

Robert White Chief of Police Denver Police Department 1331 Cherokee Street Denver, CO 80204

RE: Investigation of the shooting death of Michael Ferguson, DOB 10/26/95, DPD # 735982, in which Officer Sean Cronin, 05099, fired shots on August 31, 2016, in the 2600 block West Bates Avenue, Denver, Colorado.

# Dear Chief White:

The investigation and legal analysis of the shooting death of Michael Ferguson, in which shots were fired by Officer Sean Cronin, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against Officer Cronin. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this officer-involved shooting and the applicable Colorado law is attached to this letter.

### STATEMENT OF FACTS

At approximately 11:02 a.m. on August 31, 2016, the Denver Combined Communications Center ("the call center") received a call from a Ms. Tobi Ferguson. Ms. Ferguson started off the call be telling the dispatcher that her 21 year old son was "on the run," and "had several warrants," and had stolen a truck from her place of work two nights before her call to 911. Ms. Ferguson then told the call-taker, "my girlfriend has him at her house and we need to get him picked up." Ms. Ferguson told the call-taker she believed that her friend's home address was 2630 West Bates Avenue, and a

<sup>&</sup>lt;sup>1</sup> One warrant, issued out of Denver County, was a misdemeanor warrant for "Prob. Violation and Larceny," Case # 15CR3384, Date of Warrant, 7/22/16. A caution on this warrant noted "VIOLENT TENDENCIES." A second warrant, issued out of Summit County, was for misdemeanor "larceny". The date of this warrant was 7/25/16. A felony warrant, issued out of Summit county on 8/3/16, was for Vehicular Eluding, First Degree Assault on a Peace Officer, Resisting Arrest and Reckless Driving.. This warrant also included the caution: "VIOLENT TENDENCIES." A fourth warrant, issued in Eagle County on 8/31/16 was for failure to appear on misdemeanor and traffic charges.

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conversation followed during which the call-taker and Ms. Ferguson attempted to confirm that was the correct address. At some point during this time, Ms. Ferguson stressed to the call-taker that her son "ran in the past so make your officers be prepared that he may try to run." Ultimately, Ms. Ferguson determined the correct address was 2631 West Bates Avenue (hereinafter the "house"). She then provided a description of the stolen vehicle, stating it was a "black Chevy, extended cab [with] a rusted grill guard on the front" and confirmed that it had been reported stolen in Summit County, Colorado. She then told the call taker her son's name was "Michael Ferguson," his birthdate was "10/26/95" and that her friend was Bobbi Grosch who knew the police were coming. In answer to the question whether she knew if Ferguson was carrying any weapons, she replied, "maybe a pocket knife but other than that, not that I know of." Ms. Ferguson also told the call taker she believed her son was using "meth" and that he had been "diagnosed bi-polar [and] ADHD" but that he had not been taking his medication.

At about 11:33 a.m., five cars were dispatched on the attempt pick-up – car 422D (Officer Eric Morales, 14100), 423A (Officer Dennis Moran, 92021), 412B (Officer Matthew Dane, 15012), 412D (Officer Sean Cronin, 05099) and 411A (Officer Angelo Abeita, 91044). All five officers were dressed in full blue DPD uniforms and driving marked patrol cars. At 11:34 a.m. Officer Morales advised the dispatcher that the officers would stage at the "AMHERST/BRYANT" intersection north of the house. Officer Morales went CODE 6 at 11:36 a.m., with the other dispatched officers arriving shortly thereafter.

The officers determined that Officers Moran and Dane would approach the house on foot while Officers Abeita, Morales and Cronin would drive their cars to positions at or near the front of the house. If they saw the pick-up truck parked on the street they would use their police cars to box it in and prevent Ferguson from driving away. Officer Abeita told investigators that he and Officer Morales approached the house from the east and Officer Cronin approached from the west. The officers saw a black Chevrolet pick-up parked in front of the house. Officer Morales got close enough to see the license plate. He confirmed that the truck was the one Ferguson had stolen. Officer Morales pulled his police car up to the rear bumper of the truck. Officer Abeita positioned his police car behind Officer Morales's patrol car and Officer Cronin placed his police car in front of the pick-up. The truck was pinned in.

Officer Abeita got out of his police car and walked to a door on the east side of the house which he saw was propped open. At the same time, Officers Cronin and Morales went to the front door of the house. Officer Morales knocked and an adult female (later identified as Bobbi Grosch) opened the door and allowed him in. Initially, Officer Cronin remained outside. As Officer Morales entered the front room, he saw a male party sitting on a couch. He asked the man, later identified as Brian Kildew, whether he was Ferguson and the man said, "No. I'm not." Ms. Grosch directed

<sup>&</sup>lt;sup>2</sup> Mr. Kildew provided investigators with a written statement in which he wrote:

I was sitting in my friend Bobbie's living room and the police showed up. A kid I didn't know jumped up and ran - out the bedroom window[.] A few minutes later I heard a few shots.

Q (By officer taking the statement): Did you hear anyone say anything?

A. Officers said let go of the gun then shots fired

Q. Where did you hear the yelling and gunshots come from?

A. Just out the front door.

Q. Did you see anything?

A. I didn't see anything.

Mr. Kildew later provided investigators with a video-recorded statement in which he provided more details and confirmed that when the officers entered he was asked whether he was "Michael" and he stated he was not. Mr. Kildew stated that Ms. Grosch then told the officers that [Michael was] in the back." In reference to what he heard "out the front door," he stated that he heard officers saying "Let go of the gun! Let go of the gun!" He heard one gunshot and then two more.

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Officer Morale's attention to a bedroom and advised him that Ferguson was in the bedroom. Officer Morales called out to Officers Cronin and Abeita and both officers entered the house to provide cover. The officers heard noises in the back bedroom. In his video-recorded statement, <sup>3</sup> Officer Abeita said it, "sounded like some shuffling or somebody moving some stuff around, banging. Then Officers Morales and Cronin opened up the, the bedroom door and the suspect had fled out the back window."

Officer Dane had taken a position on the north side of the house. He saw a male run from the house. In his video-recorded statement he told investigators that he believed the suspect had gone through the house and out into the back yard. He first thought that Ferguson was coming toward him and Officer Moran but Ferguson appeared to see the two officers and turned and ran west. There was some shrubbery west of the house and Officer Dane lost sight of Ferguson as he ran into the brush. Officer Dane maintained his position in the back yard until he heard an officer make a radio call that officers were in a struggle. He ran around the east side of the house and was approaching the police cars and the stolen pick-up truck when he heard a gunshot and then, moments later, additional shots. Officer Dane told investigators that, due to his positioning, he did not see officers struggling with Ferguson nor did he see the shooting. <sup>4</sup>

When Officer Morales realized Ferguson had gone out through the window, he turned and ran out of the door on the east side of the house. When he got outside he saw Ferguson "already over the fence [on the west side]" and he ran back to his police car. He told investigators he believed Ferguson was going to run west and it was his intention to "cut him off with the cruiser." Officer Morales had just to pull away when he saw Ferguson coming toward him from the west. Ferguson attempted to get into his truck and Officer Morales drove his police car up to the driver's side of the truck to prevent Ferguson from gaining access to the vehicle.

As Officer Morales got out of his police car, he saw Ferguson go to Officer Cronin's car and attempt to enter it. Officer Morales told investigators,

there was no way he was gonna get in [Officer Cronin's car] and get out with the police car so he attempted to run. Um, he probably had a distance of, maybe, 15 feet in front of me as, as I started to chase him. And that's when I grabbed him and took him down.

The two men were on the ground in the middle of the street. Officer Morales was on top of Ferguson, straddling him and holding him down with his body weight. Officer Morales felt a "tugging on my, on my gun belt" adding that he "didn't actually realize [Ferguson] had his hands on my gun belt until I physically looked down. And I saw both his hands on my gun!" Officer Morales now realized he was in a fight for his life and began "striking" Ferguson in the face with his fists and commanding him to let go of the gun. At some point he became aware that Officer Nicholas Grove, 91042, had arrived and was attempting to assist him in controlling Ferguson. During his video-recorded interview, an investigator asked what Ferguson's "focus" was during the struggle and Officer Morales responded:

<sup>&</sup>lt;sup>3</sup> Photos showing the front and west side of the house are attached on pages 10 and 11.

<sup>&</sup>lt;sup>4</sup> Officer Moran also provided investigators with a video-recorded statement. He stated he was in a position behind the house where he could watch the backyard when he heard Officer Cronin "air" that the subject was running. He then saw Ferguson, briefly, as he ran through the yards but quickly lost sight of him. He then heard yelling from the front of the house. He started moving in that direction but was stopped by a tall wire fence. Officer Moran was climbing a fence gate when he heard two gunshots. He did not see who fired the shots.

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Honestly, I mean, him having his gun on my hand [sic] and the fact that I told him numerous times to get his ha- you know, hands off my gun, hands off my gun. And Officer Grove, both him and I were trying to, attempt to pry his fingers off. I believe he was trying to get that gun and sh-possibly shoot us."

In the course of this struggle, Officer Morales heard one gunshot which he believed "was from my holster" explaining that this was because "the first shot, I heard it behind me. Not in front of me." Immediately after he heard the first shot, Officer Morales heard two more shots. Ferguson stopped struggling and Officer Morales jumped off of him. In answer to the question where his gun was at that point, Officer Morales told investigators that it was "still in his holster."

Officer Grove, who was driving a marked police car and wearing a full blue DPD uniform, was on routine patrol when he monitored the radio call that officers were going to attempt to pick up a wanted party so he "kind of cruised into the area to provide additional support." In his video-recorded statement, Officer Grove stated when he turned onto West Bates Street he saw

Officer Morales fighting with a suspect in the middle of the street. So, I pulled up to the scene so, I'm like, where the suspect is located, my car is right at his feet area. I got out of the car. I went to go grab the suspect's arm, uh, his right arm cuz he was laying on his back and [Officer] Morales was on top. [Officer] Morales starts saying, "He's got my gun! He's got my gun!" I look – the right arm that I had, [Ferguson] was able to shake loose so then he had both his hands on [Officer Morales's] gun at that point. I had followed his hands to where he had [Officer] Morales's gun.

Officer Grove told investigators that he and Officer Morales were struggling to assure Ferguson did not get Officer Morales's handgun when he "heard somebody say something and the next thing I know, an, an officer shot [Ferguson]." In answer to a follow-up question, Officer Grove stated that before he heard a gunshot, Ferguson was actually "pulling [the gun] out of the holster." Officer Grove told investigators that he heard only one shot. He did not see who fired the shot but he saw an officer "put the gun up to [Ferguson's] head and pull the trigger."

In his video-recorded statement, Officer Abeita told investigators that when Ferguson went out the window, he ran back out the east side door and into the backyard where he saw Ferguson "scaling a ...wire fence." He saw Officer Cronin go over the fence in pursuit and he "doubled back and went back to where the truck was and where we parked our cars." When he got to the street he saw

Officer Morales on the gro – uh, on top of the suspect. The suspect was on his back. As I was running towards him, Officer Morales had his right hand on his gun and, was – as his other hand was trying to hit the suspect. As I got to where the, where the suspect was laying his head, I could clearly see his hands, both hands on a grip of Officer Morales's service weapon. Officer Morales was yelling, "He's got my gun! He's got my gun." I began to give the suspect elbow strikes. The only part of the body that was exposed to me was his head.

Officer Abeita also saw that Ferguson had a grip on Officer Morales's handgun and as he was focusing on that he heard a gunshot. He knew that Officer Cronin was

right next to me, but my, I was focused on the gun and the suspect and I actually thought Officer Morales's gun had gone off. I didn't, I didn't know. As soon as I heard the shot, I backed up. I backed away. And, I'm not sure if I heard a second shot. I see Officer Morales roll off of the, off the suspect to my right and then crawl away from him.

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As will be discussed later, the evidence shows that Officer Morales's gun had in fact discharged. The second shot Officer Abeita heard was one of two shots fired by Officer Cronin in reaction to that first gunshot.

It was Officer Cronin who had opened the bedroom door when he, Officer Morales and Officer Abeita heard noises in that back room. When he looked in the room he "saw the window open and the blinds were going like somebody had just gone out." Officer Cronin "aired" that Ferguson was running and then went back out of the front door and "over to the west side [of the house] where the window was." There was a fence on the north and west side of the house. Officer Cronin saw Ferguson go over the fence. He followed but told investigators that Ferguson was taller than he was and it took him a little more time and effort to scale the fence. By the time he had successfully scaled the fence, Ferguson was out of his sight. Moments later, he heard someone say, over the radio, that Ferguson was back on [Bates] street and he ran, south, back to the street where he

saw three officers down on the ground with the suspect in the middle of the street. Officer Morales was mounted on [Ferguson's] legs, and, then, Officer Grove and Abeita were on his upper body. He was kind of turned on his side, a little bit, and they were on him.

Officer Cronin moved in with the intent of controlling Ferguson's legs but Officer Morales was positioned in such a way that he was unable to do so. He told investigators that he had started moving to another position when he heard

Officer Grove say, "He's got the gun! He's still trying to grab the gun!" I came around to the front, and the only part – there was nowhere for me to grab with how they were. So I pulled my gun out and I put it in his face and, just as I was gonna give him in order, to make sure he was clear, I heard a gunshot. I couldn't tell anything beyond that, it was too dark [between the bodies]. Officer Morales kind of went back like this, while still on his knees, and I thought [Officer Morales] had been shot. I then moved around to the other side so that I wasn't in a path [of fire] and I shot [Ferguson] once in the face. His left arm still looked like there was something black in it over here. Officer Morales was still here. The other officers were kind of moving and I saw [his] arm move again. I thought he was bringing a gun up to shoot Officer Morales, again. So I shot again.

After he fired the second shot, Officer Cronin saw Officer Morales move away from Ferguson and he maintained his position until he was sure that Ferguson was no longer moving. He and the other officer than began the call out process and, when a supervisor arrived, he was removed from the scene and taken to Denver Police Department headquarters in accord with the officer-involved shooting protocol.

Officers and investigators conducted a neighborhood survey. Several individuals stated that they heard gunshots and at least one told officers he heard the sounds of a struggle and then heard gunshots but none indicated they had seen the shooting. Ms. Grosch provided investigators with a video-recorded statement. She corroborated the information provided by Mr. Kildew and Ms. Tori Ferguson and confirmed that she allowed the officers into her home and told them that Ferguson had gone into the bedroom. She stated that she saw officers chasing Ferguson and saw officers trying to capture him by the vehicles but lost sight of them after she saw Ferguson trying to get into a police car. She told investigators she heard the sounds of a struggle and heard someone she believed to be an officer yelling "he's going for my gun! He's going for my gun" and, then, "he's got my gun! He's got

<sup>&</sup>lt;sup>5</sup> Officer Cronin voluntarily provided investigators with a sworn statement which was video-recorded.

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my gun!" She then heard one shot which was followed after a brief pause by what she believed to be three more shots.

Officer Morales was carrying a semi-automatic 9mm Smith & Wesson M&P. This pistol may be carried with 17 rounds in the magazine and an additional round in the chamber and it was Officer Morales's practice to carry it in this fashion. The pistol was in the holster when recovered by investigators (and Officer Morales had told investigators it was in his holster when he got away from Ferguson). Firearms examiners determined that the magazine was fully loaded but *there was a spent cartridge casing in the chamber*. This fact indicates that the pistol had discharged but had failed to eject the spent casing and chamber a live cartridge. Officer Morale's holster was examined for the presence of gunshot residue and forensic chemists at the Crime lab found that

the interior surface area of the holster revealed the presence of particles characteristic of gunshot primer residue. This is indicative of the interior surface of the holster having been exposed to an environment of gunshot primer residue.

Exposure to an environment of gunshot primer residue may include any of the following possibilities:

- -The test subject discharged a firearm. [The test subject here was the holster itself.]
- -The test subject was in the immediate vicinity of a discharged firearm
- -The test subject handled a firearm
- -The test subject came into contact with a surface area that had GSR on it.<sup>6</sup>

In light of the statements by the officers indicating they saw Ferguson's hands on Officer Morales's pistol, investigators submitted the pistol for DNA testing. The final report was received by investigators on December 20, 2016. The report on the examination of the handgun grip and holster's exterior contains this conclusion: "Based on this data, and in the absence of identical twins, the probability is greater than 99.9% that the major DNA from these items can be attributed to Michael Ferguson." In short, Ferguson had his hands on Officer Morales's pistol.

Officer Cronin was armed with a 9mm Glock Model 17 semi-automatic pistol. This pistol may be carried with 17 rounds in the magazine and an additional round in the chamber. It was Officer Cronin's practice to carry it in this manner. Firearms examiners, in consultation with crime scene investigators, determined that Officer Cronin fired two rounds.<sup>8</sup>

On September 1, 2016, Dr. Andrew Hanosh, a Forensic Pathology Fellow with the Denver Office of the Medical Examiner, operating under the supervision of Dr. Krista Timm, the Assistant Medical Examiner, performed an autopsy on Ferguson's body. The doctors documented two gunshot wounds to Ferguson's head. One was a "penetrating gunshot wound of the posterior head" which caused extensive damage to the brain. The second was "penetrating gunshot wound of the right cheek" which fractured the mandible and damaged the tongue and "anterior neck strap muscles." The doctors also documented a "perforating gunshot wound of the left thigh." This bullet "sequentially perforates the skin and subcutaneous tissues of the anterolateral left thigh, deep musculature of the thigh and subcutaneous tissues and skin of the posterior left thigh." Toxicological

<sup>&</sup>lt;sup>6</sup> Ferguson's hands were swabbed for GSR testing and his trousers also submitted for GSR analysis. Both his hands and one of his pant legs "revealed the presence of particles characteristic of gunshot primer residue." The pants were submitted because there was a hole, consistent with a bullet strike, in the pant leg and, as will be noted, Ferguson suffered a gunshot wound to the leg.

The entire report, which makes it clear that Ferguson had his hands on Officer Morales pistol, is attached hereto

<sup>&</sup>lt;sup>8</sup> Two spent 9mm shell casings were located at the scene. Theses casings were "microscopically identified as having been fired in the Glock" by Firearms Examiners with the Crime Lab..

<sup>&</sup>lt;sup>9</sup> A perforating gunshot wound is sometime referred to as a "through and through" gunshot wound.

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analysis of postmortem blood was "positive for cannabinoids." The cause of death was "gunshot wounds of the head." 10

Two spent bullets were recovered from Ferguson's head during the autopsy. These bullets were tested by Firearms Examiners at the Crime Lab who determined that the bullets has the

same class characteristics [as Officer Cronin's Glock 17] with respect to caliber, and having been fired from a polygonally rifled barrel with the same number of lands and grooves . . . However, there was a lack of significant reproducible individual characteristics and the results of the comparison were inconclusive.

# **LEGAL ANALYSIS**

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. The evidence establishes that the shots fired by Officer Cronin caused Ferguson's death. The determination of whether his actions were criminal is primarily a question of legal justification.

- C.R.S. 18-1-707 is the Colorado statute which establishes the circumstances under which a peace officer may justifiably use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:
  - (1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
    - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
    - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to affect such an arrest or while preventing or attempting to prevent such an escape.
  - (2) A peace officer is justified in using **deadly physical force** upon another person ... only when he reasonably believes that it is necessary:
    - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

or

- (b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:
  - 1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
  - 2. Is attempting to escape by the use of a deadly weapon; or

<sup>&</sup>lt;sup>10</sup> The manner of death was listed as "homicide." Homicide" in this context is a medicolegal definition which states, in essence, that the death was caused by the actions of another. It is not a finding or determination that the actions which caused the death were criminal in nature.

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3. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In order to establish criminal responsibility for an officer knowingly or intentionally causing death to another, the state must prove beyond a reasonable doubt that the officer either did not really believe in the existence of the circumstances required by the statute, or, if he did hold such a belief, that belief was, in light of all available facts, unreasonable.

Section 18-1-901(2)I of the Colorado Revised Statutes defines the terms "Deadly weapon" and "Deadly physical force" as follows:

"**Deadly weapon**" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) A firearm, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

"**Deadly physical force**" means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Officers are entitled to rely on the doctrine of "apparent necessity" so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one's right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P. 274, (Colo. 1910).

As the evidence is clear that Officer Cronin intentionally discharged his weapon and that the rounds he fired struck and killed Mr. Ferguson, the issue is one of justification

# **CONCLUSION**

The question presented in this case is whether, at the instant Officer Cronin discharged his weapon, the legal justifications for using deadly physical force as set forth in C.R.S. § 18-1-707(2) were applicable. I conclude they were. The next issue is whether, in such case, there is a reasonable likelihood that we would be able to disprove the affirmative defense established by the cited statute beyond a reasonable doubt. I conclude there is no such reasonable likelihood. When Officer Cronin fired his pistol, Ferguson was fighting with Officers Morales and Groves for control of Officer Morales's handgun. Witness and forensic evidence establishes conclusively that Ferguson had his hands on the pistol and compels the conclusion that it was he who caused Officer Morales's gun to

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discharge. In point of fact, Ferguson shot *himself* in the leg and it was this first shot that led Officer Cronin to fire his pistol. In view of the positions of the officers in the struggle with Ferguson, and the fact that Ferguson had his hands on Officer Morales's pistol, Officer Cronin's actions were objectively reasonable and made necessary by Ferguson's conduct. The evidence is overwhelming that Officer Cronin's actions saved Officer Morales's life and quite possibly the lives of other officers and are legally justified.

The attached document entitled Officer-Involved Shooting Protocol 2016 explains the protocol followed in this investigation. Our file may be open for in-person review in accordance with the provisions of that protocol. The Denver Police Department is the custodian of records related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. § 16-5-209.

Very truly yours,

Mitchell R. Morrissey Denver District Attorney

cc: Officer Sean Cronin; John Davis, Attorney at Law; Michael Hancock, Mayor; All City Council Members; Kristin Bronson, Denver City Attorney; Stephanie O'Malley, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Barb Archer, Commander of Major Crimes Division; Mark Fleecs, Commander of District 4; Greggory Laberge, Crime Lab Commander; Joe Montoya, Commander of Internal Affairs; Lieutenant Matthew Clark, Major Crimes Division; Lt. Scott Torpen, Aurora Police Department Major Investigations Section; Sgt. James Kukuris, Homicide; Sgt. Tom Rowe, Homicide; Sgt. Joe Englebert, Homicide; Detective Dan Andrews, Homicide; Detective Jaime Castro, Homicide; Lamar Sims, Senior Chief Deputy District Attorney; Doug Jackson, Senior Chief Deputy District Attorney; Nicholas E. Mitchell, Office of the Independent Monitor; and Rev. William T. Golson, Jr.

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Looking north to the front of the house at 2631 West Bates Street. The pick-up truck and Officer Morale's police car are at left.



The relative positions of Officer Cronin's patrol car, Officer Morales's patrol car and the pick-up truck *after* Officer Morales moved his car to prevent Ferguson from gaining access to the truck.

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Pictures showing the front and west side of the house and a close-up of the outside of the window on the west side of the house through which Ferguson made his exit.



The northwest side of the house showing the fences and shrubbery discussed by some of the officers in their statements.

# DENVER CRIME LABORATORY DNA UNIT LABORATORY REPORT

1371 CHEROKEE STREET DENVER, CO 80204

Date of Report: 12/20/2016

GO/Case Number:

2016-556614

16-07237

Laboratory Number: Lead Investigator:

Detective Daniel Andrews / Robbery/Homicide Section

Offense: Suspect(s): Homicide - Other Michael Ferguson

Victim(s):

Location: 2631 W Bates Ave

### ARTICLES SUBMITTED:

Item Number	Description
826146-1	Smith & Wesson handgun and magazine recovered from "marker #1 2600 Blk W Bates Ave":
	Swab of grip (1-1)
	Swab of trigger (1-2)
	Swab of rear slide (1-3)
826146-9	Holster from duty belt recovered from "2600 Blk W Bates Ave marker 1":
	Swab of entire exterior (9-1)
	Swab of release button and inside lip (9-2)
826189-1	Swabs recovered from "2600 Blk W Bates Ave CO PL 386-OQZ #4317":
	"steering wheel @ mkr A" (1A)
	"gear shifter @ mkr B" (1B)
827905-1A	Postmortem blood sample from Michael Ferguson

### ANALYSIS AND RESULTS:

- Short Tandem Repeat (STR)-DNA analysis was conducted on the above evidence item(s). The DNA loci of the Identifiler® Plus PCR Amplification Kit were analyzed.
- 2. Short Tandem Repeat (STR)-DNA analysis was conducted on the above reference item(s). The DNA loci of the PowerPlex® Fusion System were analyzed.
- 3. The DNA profiles obtained from the handgun grip and the holster exterior (826146-1-1 and 9-1, respectively) present as mixture of at least two people and at least three people, respectively, each including at least one male contributor. The same major male DNA profile was obtained from these two items and matches Michael Ferguson. These major DNA profiles are estimated to be at least 40 quadrillion (40E15) times more likely if the samples originated from Michael Ferguson than if they originated from one unknown, unrelated person. Based on this data, and in the absence of identical twins, the probability is greater than 99.9% that the major DNA from these items can be attributed to Michael Ferguson.
- 4. The DNA profile obtained from the handgun trigger (826146-1-2) presents as a mixture of at least three people, including at least one male contributor and at least one female contributor. This DNA mixture is estimated to be 4 million (4E6) times more likely (extremely strong support) if the sample originated from Michael Ferguson and two unknown, unrelated persons than if it originated from three unknown, unrelated persons.
- 5. The DNA profile obtained from the handgun rear slide (826146-1-3) presents as a mixture of at least three people, including at least one male contributor, with a mixed major DNA profile that is consistent with two people. This mixed major DNA profile is estimated to be 5 billion (5E9) times more likely (extremely strong support) if the sample originated from Michael Ferguson and one unknown, unrelated person than if it originated from two unknown, unrelated persons.

Disposition of Articles:	Property Management Section and DNA laboratory storage		
ANALYST:	TECHNICAL / ADMINISTRATIVE REVIEW:		
Sware Beeslier	fiff the and		
Susan Berdine Forensic Scientist	Kelsey McDonald Forensic Scientist		

# DENVER CRIME LABORATORY DNA UNIT LABORATORY REPORT

GO/Case Number: Laboratory Number: 2016-556614

Lead Investigator:

16-07237 Detective Daniel Andrews / Robbery/Homicide Section 1371 CHEROKEE STREET DENVER, CO 80204

Date of Report:12/20/2016

- 6. The DNA profile obtained from the holster button/lip (826146-9-2) presents as a mixture of at least three people, including at least one male contributor and at least one female contributor. This DNA mixture is estimated to be 30,000 times more likely (very strong support) if the sample originated from Michael Ferguson and three unknown, unrelated persons than if it originated from three unknown, unrelated persons.
- 7. The DNA profiles obtained from the steering wheel and gear shifter swabs (826189-1A and 1B, respectively) present as a mixtures of least five people, each including at least one male contributor. No conclusions can be made regarding these two items.
- 8. Known saliva samples from Officer Nick Grove and Officer Eric Morales are required for DNA comparison purposes. Please submit a new laboratory request when these sample(s) are entered in the Property Management Section.

END OF REPORT

Disposition of Articles:	Property Management Section	and DNA laboratory	storage
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**ANALYST:** 

TECHNICAL / ADMINISTRATIVE REVIEW:

Susan Berdine
Forensic Scientist

Kelsey McDonald Forensic Scientist



# OFFICER-INVOLVED SHOOTING PROTOCOL 2016



Mitchell R. Morrissey
Denver District Attorney

The Denver District Attorney is a State official and the Denver District Attorney's Office is a State agency. As such, although the funding for the operations of the Denver District Attorney's Office is provided by the City and County of Denver, the Office is independent of City government. The District Attorney is the chief law enforcement official of the Second Judicial District, the boundaries of which are the same as the City and County of Denver. By Colorado statutory mandate, the District Attorney is responsible for the prosecution of violations of Colorado criminal laws. Hence, the District Attorney has the authority and responsibility to make criminal charging decisions in peace officer involved shootings.

The Denver Police Department was created by the Charter of the City and County of Denver. Under the Charter, the police department is overseen by the Office of the Denver Manager of Safety, headed by the Executive Director of the Department of Safety. The Executive Director of the Department of Safety ("Executive Director") and the Chief of Police are appointed by and serve at the pleasure of the Mayor of Denver. The District Attorney has no administrative authority or control over the personnel of the Denver Police Department. That authority and control resides with City government.

When a peace officer shoots and wounds or kills a person in Denver, Colorado, a very specific protocol is followed to investigate and review the case. Officer-involved shootings are not just another case. Confrontations between the police and citizens where physical force or deadly physical force is used are among the most important events with which we deal. They deserve special attention and handling at all levels. They have potential criminal, administrative, and civil consequences. They can also have a significant impact on the relationship between law enforcement officers and the community they serve. It is important that a formal protocol

be in place in advance for handling these cases. The following will assist you in understanding the Denver protocol, the law, and other issues related to the investigation and review of officer-involved shootings.

For more than three decades, Denver has had the most open officer-involved shooting protocol in the country. The protocol is designed to insure that a professional, thorough, impartial, and verifiable investigation is conducted and that it can be independently confirmed by later review. The fact that the investigative file is open to the public for in-person review at the conclusion of the investigation assures transparency in these investigations. This serves to enhance public confidence in the process.

When an officer-involved shooting occurs, it is immediately reported to the Denver police dispatcher, who then notifies all persons on the call-out list. This includes the Deputy Chief of Police Operations, Major Crimes Commander, Senior Chief Deputy District Attorney, Homicide Unit personnel, Director of the Crime Lab, Crime Lab Technicians, and others. These individuals respond first to the scene and then to DPD headquarters to take statements and conduct other follow-up investigation. The Denver District Attorney, Executive Director, and Chief of Police are notified of the shooting and may respond.

The criminal investigation is conducted under a specific investigative protocol with direct participation of Denver Police Department and Denver District Attorney personnel. Members of the Aurora Police Department also respond and participate in the investigation, evaluation and review as part of a multi-agency team, per C.R.S. 16-2.5-301 which became effective in 2016.

The primary investigative personnel are assigned to the Homicide Unit where the best resources reside for this type of investigation. The scope of the investigation is broad and the focus is on all involved parties. This includes the conduct of the involved officer(s) and the conduct of the person who is shot. Standard investigative procedures are used at all stages of the investigation, and there are additional specific procedures in the Denver Police Department's Operations Manual for officer-involved shootings to further insure the integrity of the investigation. For example, the protocol requires the immediate separation and sequestration of all key witnesses and all involved Involved officers are separated at the scene, officers. transported separately by a supervisor to police headquarters, and sequestered with restricted visitation until a formal voluntary statement is taken. Generally the officers speak with their attorney prior to making their voluntary statement. A log is kept to document who has contact with the officer. This is done to insure totally independent statements and to avoid even the appearance of collusion.

In most cases, the bulk of the criminal phase of the investigation is concluded in the first twelve to twenty-four hours. Among other investigative activities, this includes a thorough processing of the crime scene; a neighborhood canvass to identify all possible witnesses; the taking of written statements from all witnesses, and video-recorded statements from all key witnesses and the involved officer(s). The involved officer(s), like any citizen, have a Constitutional Fifth Amendment right not to make a statement. In spite of this fact, Denver officers have given voluntary sworn statements in every case, without exception, since 1979. Since November of 1983, when the video interview room was first used, each of these statements has been video-recorded. No other major city police department in the nation can make this statement.

Officers are trained to properly secure their firearm after an officer-involved shooting. The protocol provides for the firearm to be taken from the officer by crime lab personnel for appropriate testing. The officer is provided a replacement weapon to use pending the completion of the testing. The protocol also allows for any officer to voluntarily submit to intoxicant testing if they chose. The most common circumstance under which an officer might elect to do so would be in a shooting while working at an establishment that serves alcohol beverages. Compelled intoxicant testing can be conducted if there are indications of possible intoxication and legal standards are met.

The Denver Chief of Police and Denver District Attorney commit significant resources to the investigation and review process in an effort to complete the investigation as quickly as practicable. There are certain aspects of the investigation that take more time to complete. For example, the testing of physical evidence by the crime lab -- firearm examination, gunshot residue or pattern testing, blood analyses, and other testing commonly associated with these cases -- is time consuming. In addition, where a death occurs, the autopsy and autopsy report take more time and this can be extended substantially if it is necessary to send lab work out for very

specialized toxicology or other testing. In addition to conducting the investigation, the entire investigation must be thoroughly and accurately documented.

Officer-involved shooting cases are handled by the District Attorney, and the Senior Chief Deputies District Attorney specifically trained for these cases. As a rule, two of these district attorneys respond to each officer-involved shooting. They are notified at the same time as others on the officer-involved shooting call-out list and respond to the scene of the shooting and then to police headquarters to participate in taking statements. They are directly involved in providing legal advice to the investigators and in taking video-recorded statements from citizens and officer witnesses, and from the involved officer(s). They continue to be involved throughout the follow-up investigation.

The Denver District Attorney is immediately informed when an officer-involved shooting occurs, and if he does not directly participate, his involved personnel advise him throughout the investigative process. It is not unusual for the District Attorney to personally respond and participate in the investigation. At the conclusion of the criminal investigation the District Attorney personally makes the filing decision.

If criminal charges are not filed, a decision letter describing the shooting and the legal conclusions is sent to the Chief of Police by the District Attorney, with copies to the involved officer(s), the Mayor, City Council members, the Executive Director of the Department of Safety, other appropriate persons, and the media. If the involved peace officer is from an agency other than DPD, the letter is directed to the head of that agency. A copy of the decision letter is also posted on the Denver DA website (www.denverda.org) so that members of the public may learn the facts of the incident and the reasons for the decision of the District Attorney.

At this time, the case file that is maintained by Denver District Attorney's Office is available and open to the public for review, unless a criminal case is pending concerning the facts of the shooting, and subject to the Colorado Criminal Justice Records Act. Allowing our file to be reviewed permits interested members of the public to learn more about the investigation; to verify that our description of the facts in the decision letter is accurate; to verify that our decision is supported by the facts; and to determine whether they wish to challenge our decision under C.R.S. 16-5-209.

<sup>&</sup>lt;sup>1</sup> C.R.S. 20-1-114, enacted in 2015, requires Colorado District Attorneys to publicly release a report when they have decided not to file criminal charges against an officer in an officer-involved shooting. In Denver, this has been our protocol for decades before the legislation was enacted. Indeed, as is explained herein, we provide even greater "transparency" than the new legislation provides because, in addition to distributing the decision letter publicly, we make our files of the underlying factual investigation available for inspection by members of the public, including the media.

Allowing access for review is important to the transparency of our decision making in these important cases, and serves to foster public trust and confidence in the investigative process and in the decisions that are made.<sup>2</sup>

If criminal charges are filed against the officer(s), the charges are filed in compliance with the same procedures as any other criminal filing. In that event, the file maintained by the Denver District Attorney's Office becomes available and open to the public for review at the conclusion of the criminal prosecution in the same manner as mentioned above.

### THE DECISION

By operation of law, the Denver District Attorney is responsible for making the criminal filing decision in all officer-involved shootings in Denver.

The same standard that is used in all criminal cases in Denver is applied to the review of officer-involved shootings. The filing decision analysis involves reviewing the totality of the facts developed in the criminal investigation and applying the pertinent Colorado law to those facts. The facts and the law are then analyzed in relation to the criminal case filing standard. For criminal charges to be filed, the District Attorney must find that there is a reasonable likelihood that all of the elements of the crime charged can be proven beyond a reasonable doubt, unanimously, to twelve jurors, at trial, after considering reasonable defenses. If this standard is met, criminal charges will be filed.

One exception to the Denver District Attorney making the filing decision is if it is necessary to use the Denver Statutory Grand Jury. The District Attorney will consider it appropriate to refer the investigation to a grand jury when it is necessary for the successful completion of the investigation. It may be necessary in order to acquire access to essential witnesses or tangible evidence through the grand jury's subpoena power, or to take testimony from witnesses who will not voluntarily cooperate with investigators or who claim a privilege against self-incrimination, but whom the district attorney is willing to immunize from prosecution on the basis of their testimony. The grand jury could also be

<sup>2</sup> However, the complete official file of the investigation remains in the custody of the Denver Police Department, which is the custodian of the case records. If we have made a decision not to file criminal charges, the Denver Police Department begins an *administrative* investigation and review of the incident. This may result in the gathering of additional information and the production of additional documents concerning the incident. The Denver District Attorney's Office is not involved in the administrative investigation and does not receive the additional information or investigative materials developed in that investigation. At the end of the administrative review, therefore, the files maintained by the Denver Police Department pertaining to the shooting will likely contain more information than the criminal investigation file.

used if the investigation produced significant conflicts in the statements and evidence that could best be resolved by grand jurors. If the grand jury is used, the grand jury could issue an indictment charging the officer(s) criminally. To do so, at least nine of the twelve grand jurors must find probable cause that the defendant committed the charged crime. In order to return a "no true bill," at least nine grand jurors must vote that the probable cause proof standard has not been met. In Colorado, the grand jury can now issue a report of their findings when they return a no true bill or do not reach a decision -- do not have nine votes either way. The report of the grand jury is a public document.

A second exception to the Denver District Attorney making the filing decision is when it is necessary to have a special prosecutor appointed. The most common situation is where a conflict of interest or the appearance of impropriety is present. As an example, if an officer involved in the shooting is related to an employee of the Denver District Attorney's Office, or an employee of the Denver District Attorney's Office is involved in the shooting. Under these circumstances, an appearance of impropriety may exist if the Denver District Attorney's Office handled the case. This may cause our office to seek a special prosecutor.

### THE COLORADO LAW

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting and causing injury or death to another human being is generally prohibited as assault or murder in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force is justified. As there is generally no dispute that the officer intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Section 18-1-707 of the Colorado Revised Statutes provides that while effecting or attempting to effect an arrest, a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. Therefore, the question presented in most officer-involved shooting cases is whether, at the instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person, was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for knowingly or intentionally shooting another, the state must

prove beyond a reasonable doubt that the person doing the shooting either did not really believe he or another was in imminent danger, or, if he did hold such belief, that belief was, in light of the circumstances, unreasonable.

The statute also provides that a peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to effect an arrest . . . of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon; or otherwise indicates, except through motor-vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In Colorado, deadly physical force means force the intended, natural, or probable consequence of which is to produce death and which does in fact produce death. Therefore, if the person shot does not die, by definition, only physical force has been used under Colorado law.

## **GENERAL COMMENTS**

The following statement concerns issues that are pertinent to all officer-involved shootings.

The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called the split-second decision to shoot. It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a split-second decision to shoot. The split-second decision is generally made to stop a real or perceived threat or aggressive behavior by the citizen. It is this split-second time frame which typically defines the focus of the criminal-review decision, not the string of decisions along the way that placed the participants in the life-or-death final frame, although these certainly may be important in a case as well.

When a police-citizen encounter reaches this split-second window, and the citizen is armed with a deadly weapon, the circumstances generally make the shooting justified, or at the least, difficult to prove criminal responsibility under the criminal laws and required legal levels of proof that apply. The fact that no criminal charges are fileable in a given case is not necessarily synonymous with an affirmative finding of justification, or a belief that the matter was in all respects handled appropriately from an administrative viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt, unanimously, to a jury. This is the limit of the District Attorney's statutory authority in these matters. For these reasons, the fact that a shooting may be "controversial" does not mean it has a criminal remedy. The fact that the District Attorney may feel the shooting was avoidable or "does not like" aspects of the shooting, does not make it criminal. In these circumstances, remedies, if any are appropriate, may be in the administrative or civil arenas. The District Attorney has no administrative or civil authority in these matters. Those remedies are primarily the purview of the City government, the Denver Police Department, and private civil attorneys.

Research related to officer-involved shootings indicates that criminal charges are filed in approximately one in five hundred (1-in-500) shootings. And, jury convictions are rare in the filed cases. In the context of officer-involved shootings in Denver (approximately 8 per year), this ratio (1-in-500) would result in one criminal filing in 60 years. With District Attorneys now limited to three 4-year terms, this statistic would mean there would be one criminal filing during the combined terms of 5 or more District Attorneys.

In Denver, there have been three criminal filings in officer-involved shootings in the past 40 years, spanning seven District Attorneys. Two of the Denver officerinvolved shootings were the result of on-duty, work related shootings. One case was in the 1970s and the other in the 1990s. Both of these shootings were fatal. The cases resulted in grand jury indictments. The officers were tried and found not guilty by Denver juries. The third criminal filing involved an off-duty, not in uniform shooting in the early 1980s in which one person was wounded. The officer was intoxicated at the time of the shooting. The officer pled guilty to felony assault. This case is mentioned here, but it was not in the line of duty and had no relationship to police work. In 2004, an officer-involved shooting was presented by the District Attorney to the Denver Statutory Grand Jury. The Grand Jury did not indict. A brief report was issued by the Grand Jury.

Based on the officer-involved shooting national statistics, there is a very high likelihood that individual District Attorneys across the country will not file criminal charges in an officer-involved shooting during their entire tenure. It is not unusual for this to occur. In Denver, only two of the past seven District Attorneys have done so. This, in fact, is statistically more filings than would be expected. There are many factors that combine to cause criminal prosecutions to be rare in officer-involved shootings and convictions to be even rarer. Ultimately, each shooting must be judged based on its unique facts, the applicable law, and the case filing standard.

The American Bar Association's *Prosecution Standards* state in pertinent part: "A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction. In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions. Among the factors the prosecutor may

properly consider in exercising his or her discretion is the prosecutor's reasonable doubt that the accused is in fact guilty." The National District Attorneys Association's National Prosecution Standards states in pertinent part: "The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial. The prosecutor should not attempt to utilize the charging decision only as a leverage device in obtaining guilty pleas to lesser charges." The standards also indicate that "factors which should not be considered in the charging decision include the prosecutor's rate of conviction; personal advantages which prosecution may bring to the prosecutor; political advantages which prosecution may bring to the prosecutor; factors of the accused legally recognized to be deemed invidious discrimination insofar as those factors are not pertinent to the elements of the crime."

Because of the difference between the criminal, administrative, and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three uniquely different arenas. While criminal charges may not be fileable in a case, administrative action may be very appropriate. The legal levels of proof and rules of evidence that apply in the criminal-law arena are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the split-second decision to shoot are most effectively addressed by the Denver Police Department through the Use of Force Review Board and the Tactics Review Board process and administrative review of the shooting.

The administrative-review process, which is controlled by less stringent legal levels of proof and rules than the criminal-review process, provides both positive remedial options and punitive sanctions. This process also provides significantly broader latitude in accessing and using information concerning the background, history, and job performance of the involved officer. This type of information may have limited or no applicability to the criminal review, but may be very important in making administrative decisions. This could include information concerning prior officer-involved shootings, firearm discharges, use of non-lethal force, and other conduct, both positive and negative.

The Denver Police Department's administrative review of officer-involved shootings improves police training and performance, helps protect citizens and officers, and builds public confidence in the department. Where better approaches are identified, administrative action may be the only way to effect remedial change. The administrative review process provides the greatest opportunity to bring officer conduct in compliance with the expectations of the department and the community it serves. Clearly, the

department and the community expect more of their officers than that they simply conduct themselves in a manner that avoids criminal prosecution.

There are a variety of actions that can be taken administratively in response to the department's review of the shooting. The review may reveal that no action is required. Frankly, this is the case in most officer-involved shootings. However, the department may determine that additional training is appropriate for all officers on the force, or only for the involved officer(s). The review may reveal the need for changes in departmental policies, procedures or rules. In some instances, the review may indicate the need for changing the assignment of the involved officer, temporarily or permanently. Depending on the circumstances, this could be done for the benefit of the officer, the community or both. And, where departmental rules are violated, formal discipline may be appropriate. The department's police training and standards expertise makes it best suited to make these decisions.

The Denver Police Department's Use of Force Review Board and the Tactics Review Board's after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision to shoot is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high.

It is clear not every officer will handle similar situations in similar ways. This is to be expected. Some officers will be better than others at defusing potentially-violent encounters. This is also to be expected. To the degree officers possess skills that enhance their ability to protect themselves and our citizens, while averting unnecessary shootings, Denver will continue to have a minimal number of officer-involved shootings. Denver officers face life-threatening confrontations hundreds of times every year. Nevertheless, over the last 20 years officer-involved shootings have averaged less than eight annually in Denver. These numbers are sharply down from the 1970s and early 1980s when there were 12-to-14 shootings each year.

Skill in the use of tactics short of deadly force is an important ingredient in keeping officer-involved shootings to a minimum. Training Denver officers receive in guiding them in making judgments about the best tactics to use in various situations, beyond just possessing good firearms proficiency, is one of the key ingredients in minimizing unnecessary and preventable shootings. Denver police officers handle well over a million calls for service each year and unfortunately in responding to these calls they face hundreds of life-threatening encounters in the process. In

the overwhelming majority of these situations, they successfully resolve the matter without injury to anyone. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. It should be a part of the review of every officer-involved shooting, not just to look for what may have been done differently, but also to see what occurred that was appropriate, with the ultimate goal of improving police response.

### RELEASE OF INFORMATION

Officer-involved shootings are matters of significant and legitimate public concern. Every effort must be made to complete the investigation and make the decision as quickly as practicable. The Denver Protocol has been designed to be as open as legal and ethical standards will permit. "Fair Trial -- Free Press" standards and "The Colorado Rules of Professional Conduct" limit the information that can be released prior to the conclusion of the investigation, and the "Colorado Criminal Justice Records Act" dictates that the public interest be considered before releasing criminal justice records.

Officer-involved shooting cases always present the difficult issue of balancing the rights of the involved parties and the integrity of the investigation with the public's right to know and the media's need to report the news. The criminal investigation and administrative investigation that follows can never keep pace with the speed of media This creates an inherent and unavoidable reporting. dilemma. Because we are severely restricted in releasing facts before the investigation is concluded, there is the risk that information will come from sources that may provide inaccurate accounts, speculative theories, misinformation or disinformation that is disseminated to the public while the investigation is progressing. This is an unfortunate byproduct of these conflicted responsibilities. This can cause irreparable damage to individual and agency reputations.

It is our desire to have the public know the full and true facts of these cases at the earliest opportunity, but we are require by law, ethics, and the need to insure the integrity of the investigation to only do so at the appropriate time.

## **CONCLUSION**

The protocol that is used in Denver to investigate and review officer-involved shootings was reviewed and strengthened by the Erickson Commission in 1997, under the leadership of William Erickson, former Chief Justice of the Colorado Supreme Court. The report released after the 15-

month-long Erickson Commission review found it to be one of the best systems in the country for handling officer-involved shootings. We recognize there is no "perfect" method for handling officer-involved shooting cases. We continue to evaluate the protocol and seek ways to strengthen it.

We encourage any interested person to read the decision letter in these cases, and if desired, to review the investigative case file at our office to learn the facts. We find that when the actual facts are known a more productive discussion is possible.

Mitchell R. Morrissey

Denver District Attorney

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